HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 351 (M/S) 2004

Smt. Shail Kumari (Appellant)

Versus.

Addl. District Magistrate & others (Respondent)

Approved for reporting.

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~~Not approved for reporting~~

Date 12.8.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 351 of 2004

Smt. Shail Kumar ..... Appellant

Vs

Addl. District Magistrate & others ...Respondents.

Sri M.C. Kandpal, Sr. Advocate for the appellant
Sri Alok Singh, Sr. Advocate assisted by S.S. Chaudhari, Advocate for the respondents.

Dated: 12.8.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 26.3.04, 7.4.04 and 24.4.04 passed by the Addl. District magistrate, Nainital.

Briefly stated the facts giving rise to the writ petition are that according to the case of the petitioner he is a tenant of House No. 75-A, Kashiyanai Amad Kothi, near Sant Mairee Convent School, Nainital.

The petitioner has submitted is that she is residing in the house in disputed since 1971, and the house was declared as the property of Sunni Central Board on 10.11.1976 by the District Magistrate, Nainital.

The submission of the petitioners is that she was away in connection with her treatment at Jaipur and the vacancy was declared without serving notice on the petitioner behind her back. The R.C. & E.O. has allotted the house to respondent no.3 Smt. Champa Bisht on 7.4.2004.

The counsel for the petitioner has submitted that the entire proceedings were ex parte and no notices were served upon the petitioner before the declaration of vacancy and allotted the premises to the respondent no.3.

Both the parties have agreed that since the allotment order has already been made, therefore, alternative remedy of revision is available to them under Section 18 of U.P. Act. No. XIII of 1972.

Vacancy being since qua non for allotment or release, the revisional Court shall decide the question of vacancy along with order impugned i.e. allotment order.

If such a revision is filed by the petitioner within two weeks after obtaining the certified copy of the order, it shall be disposed of on merits, without entering on the question of delay.

Subject to the aforesaid observation, the writ petition is dismissed on the ground of alternative remedy. No order as to costs.

(Rajesh Tandon J.)

12.8.04
*Dhyani